



# **INDIANA DEPARTMENT OF REVENUE ADMINISTRATIVE PROTEST GUIDE**

June 29, 2015

## **Introduction**

When a taxpayer receives a proposed assessment for additional tax or has been denied a request for refund, the taxpayer may be entitled to file a protest with the Indiana Department of Revenue (DOR). This guide provides information and guidance on the protest process.

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**Note that this guide provides general advice on how to best present a protest. Following the recommendations is not a guarantee that your protest will be sustained.**



## **I. Situations That Can Be Protested**

If you receive a proposed assessment or denial of a claim for refund from DOR, you have 60 days from the date the proposed assessment or refund denial is issued to file a protest. The mailing address for a protest is:

Indiana Department of Revenue  
Attn: Legal Division, MS 102  
100 N. Senate Avenue, Room N248  
Indianapolis, IN 46204

## **II. Filing a Protest – What to Include**

Your protest must be in writing. When writing the protest, provide as much relevant information as possible. This includes, but is not limited to:

- a. The tax years and months that are at issue.
- b. The tax type that is at issue.
- c. The specific part of the proposed assessment or refund denial you disagree with.
- d. The specific reason you disagree with DOR's position.
- e. The statutes, regulations, and/or court cases you believe support your protest.
- f. The type of documentation you have that you believe supports your protest.
- g. Copies of the supporting documentation, along with an explanation of the specific portions of the relevant documentation.
- h. The specific result you desire. If it is a dollar amount with which you do not agree, include the specific dollar amount you believe is correct. If it is a percentage to be applied to audit calculations, include that specific percentage.

Your protest will be handled by a hearing officer, who might not have all the information seen by other DOR employees at earlier stages of your audit or claim for refund. Include enough explanation of the facts for the hearing officer to understand the overall circumstances and to support your specific protest. Remember, you are the expert with the most knowledge of your activities. It is up to you to get the relevant facts into the protest.



### **III. The Contact Letter – What Does It Mean?**

When you submit a written protest, DOR will send you a one-page acknowledgement letter with the docket number assigned to your protest. Later, your hearing officer will send you a more detailed letter called a “contact letter.” This letter will provide the date and time of your administrative hearing. You can request a reasonable change to the date and time for your convenience by contacting your hearing officer.

You also can request that the hearing be conducted over the telephone. Call or email the hearing officer to request a telephone hearing. There is rarely any significant difference between a telephone hearing and an in-person hearing. If your protest depends heavily on a large number of documents, however, an in-person hearing can be beneficial because you can point the hearing officer to the information you believe is relevant. That is a matter of your preference. If the hearing will be conducted over the telephone, the hearing officer will provide a number for you to call at the time of the hearing.

The contact letter will also contain additional important information:

- a. Your protest’s docket number
- b. The location of DOR’s offices where the hearing will be conducted
- c. Instructions for contacting the hearing officer if you have an emergency at the scheduled hearing time
- d. The security procedures to enter the Indiana Government Center North Building
- e. Instructions for completing and providing a power-of-attorney form (POA-1) if you will be represented by another person in the protest process
- f. The anticipated timing for DOR to issue its written decision
- g. The hearing officer’s direct telephone number and email address

Keep this letter because it has the hearing officer’s contact information. You will need this regardless of whether you have an in-person hearing or a telephone hearing.



#### **IV. Hearing Preparation – What to Bring to the Administrative Hearing**

The administrative hearing will be more effective if you are properly prepared. Here are some tips for making sure you are prepared for your hearing:

- a. Review the audit report, refund denial, or other document that explains the DOR position you are protesting.
- b. Review your protest letter so that you are familiar with your reasons for protesting.
- c. Bring copies of all documents that support your protest. For example, if you are protesting that you paid sales tax at the time you purchased an item, bring a copy of the receipt. Please do not bring original documents.
- d. Be prepared to explain things that you might have already explained to an auditor or other DOR employee. The hearing officer may not have all the information that you provided to another employee. Therefore, even though the hearing officer has reviewed the protest prior to the hearing, it is best to assume that he does not know anything about the protest and explain too much rather than too little.

Being thoroughly familiar with your own circumstances and the specifics of the protest is the best way to ensure that the hearing officer understands your position.

#### **V. The Administrative Hearing**

The hearing is really just an opportunity for you to explain your position to the hearing officer and to make the best case for your protest. The hearing is informal. The hearing officer is not a judge, and the hearing room is not a court room. Often, the hearing officer will ask for clarification of one or more points you are addressing. After you present your position, the hearing officer might ask whether you have documentation supporting your position.

Hearings are typically scheduled for 60 minutes but can be shorter or longer. The length of time is up to you and is subject to the hearing officer's schedule. You are the one who will be explaining the protest, so you can take as much time as is reasonably needed to fully explain your position. The hearing officer is there to listen and possibly ask questions.

#### **VI. Post-Hearing**

After a hearing, the hearing officer usually issues a written decision within 60 days. Occasionally, a written decision will take longer, depending on various factors such as the complexity of the protest. The 60 days will run from the time you submit your last piece of documentation and/or analysis. For example, if your hearing is held on July 1 but is held open to July 8 to allow you time to submit additional invoices or other documentation, the 60 days will begin on July 8.

Letters of Findings (LOFs), Memoranda of Decision (MODs), and Final Orders Denying Refund (ODRs) have different post-hearing procedures.



An LOF sustains, denies, or partially sustains and partially denies a protest, depending on the number and nature of those issues:

- a. If the LOF sustains a protest, DOR agrees with your protest and will dismiss the proposed assessment being protested. You will not need to take any further actions. Be sure to keep the LOF for future reference because it might be the only documentation sent to you on this matter.
- b. If the LOF denies the protest, DOR is not convinced that you have proven the proposed assessment wrong, as required by statute, and the proposed assessment will remain in place. If this is the case, you can ask for a rehearing (*see below*), pay the assessment, or file a lawsuit with the Indiana Tax Court.
- c. If the LOF partially sustains and partially denies the protest, DOR agrees with one or more, but not all, of the points you protested. Many protests address more than one issue. An LOF can sustain the protest on one issue and deny the protest on a second issue. In that case, the portion of the protest that was sustained will be dismissed, while the portion denied will remain. If any portion of your protest is denied, you can ask for a rehearing on the denied portion, pay the remaining amount of the assessment, or file a lawsuit with the Indiana Tax Court.

An MOD sustains either all or a portion of a claim for refund:

- a. If an MOD sustains your protest in whole, you do not need to do anything else. DOR will process your claim for refund for the entire amount.
- b. If an MOD sustains part of your protest but denies another part of it, DOR will process your claim and refund the amount sustained in the MOD. You can file a lawsuit with the Indiana Tax Court for the amount denied.

An ODR denies the entire amount of a claimed refund under protest. If your protest is denied in whole, you can file a lawsuit with the Indiana Tax Court.

## **VII. Request for Rehearing**

If your protest of a proposed assessment is denied in any portion, you have the right to request a rehearing. Rehearings are granted at DOR's discretion. Typically, rehearings are granted when:

- a. You have new, relevant documentation that was unavailable at the time of the original hearing;
- b. The LOF did not address a portion of your protest; or
- c. You believe that the hearing officer misunderstood your protest.



DOR will review a request for rehearing and determine whether a rehearing is warranted. If DOR determines that the reason(s) you list in your request could make a difference in the outcome of the protest, then DOR will send you a letter scheduling a rehearing. If DOR determines that the reason(s) you list will not result in a different outcome of the protest, then DOR will send you a letter saying that the request for rehearing has been denied. At that point, you can either accept that as DOR's final determination or file a lawsuit with the Indiana Tax Court.

## **VIII. Filing in Court**

The Indiana Tax Court has exclusive jurisdiction to hear cases regarding Indiana taxes. The Tax Court is a formal court with a judge and all the standard rules that apply to court proceedings. DOR is represented in court by the Indiana Attorney General's Office. The procedures for contacting the Tax Court and for filing a lawsuit are available online at <http://www.in.gov/judiciary/tax/>.

## **IX. Settlement Offers**

At any point during the protest process, a taxpayer can make a settlement offer to DOR. Settlement offers are considered at DOR's discretion, and DOR is under no obligation to accept such an offer. A settlement offer must be in writing and must state a specific offer to settle the protest. If you wish to make a settlement offer during the protest process, you should send the offer to the hearing officer assigned to your protest.

The hearing officer then will present the offer to DOR's senior managers who will decide whether or not to accept the offer or possibly to make a counter-offer. The hearing officer then will relay that decision to you. If both parties agree to a settlement, DOR will compose a draft settlement agreement.

Once both parties are satisfied with that document, DOR will send you two (2) copies for taxpayer signatures and dates. You will send both signed and dated copies back to the hearing officer who will have DOR's personnel sign and date both copies. One copy with both signatures and dates will be sent to you for your records, and DOR will keep the other signed and dated copy.

## **X. Definitions**

DOR's written documents often use terminology specific to Indiana state taxes. The following is a list of the more common terms:

**Administrative hearing.** This is an informal meeting during which you explain your protest to DOR. Although the administrative hearing is conducted by DOR's Legal Division, it is informal and is not a court. No record is created and no formal rules of evidence are used.



**Hearing officer.** A hearing officer is an attorney and is a DOR employee who conducts administrative hearings. The hearing officer is not a judge. The hearing officer's job is to write and issue DOR's decision on a protest after a hearing.

**IAC.** This means Indiana Administrative Code, which contains the various regulations for different state agencies. Regulations are an agency's rules created to explain how it applies the statutes for its area of governance. The DOR's regulations are found under Title 45 of the IAC. An example of an Indiana Administrative Code reference is 45 IAC 2.2-3-4. This means that the document is referring to Title 45 of the Indiana Administrative Code, Article 2.2, Chapter 3, Section 4.

**IC.** This means Indiana Code, which is the codification of Indiana law into statutes. Indiana's state taxes are found under Title 6 of the Indiana Code. An example of an Indiana Code reference is IC § 6-8.1-5-1(c). This means that the document is referring to Indiana Code Title 6, Article 8.1, Chapter 5, Section 1, Subsection (c). The "§" is merely a symbol that means "section."

**LOF.** This means Letter of Finding, which is the DOR's written decision on a protest. The LOF explains DOR's reason for issuing a proposed assessment; the taxpayer's reason for believing that she is not liable for the proposed assessment; and the relevant statutes, regulations, and court cases. The LOF discusses all these factors and reaches a conclusion called a "finding." The finding either sustains or denies a protest. If the protest is sustained, DOR agrees with the taxpayer and will make the changes that are requested. If the protest is denied, DOR is not convinced that the taxpayer has proven the proposed assessment wrong, as required by statute. LOFs are published in the Indiana Register, which can be found online.

**MOD.** This means Memorandum of Decision, which is DOR's written decision when it is wholly or partially agreeing with a claim for refund at the hearing level. The MOD is written in a manner similar to an LOF. MODs are not published.

**ODR.** This means Final Order Denying Refund, which is DOR's written decision when it is wholly denying a claim for refund at the hearing level. The ODR is written in a manner similar to an LOF. ODRs are not published.

**POA.** This means power of attorney. You can have another person represent you in a protest process. That representative can be anyone of your choosing and is often referred to as a "POA." However, you must properly complete and submit a POA-1 form before DOR can communicate with the POA about your protest. The POA-1 form is available online on the DOR website.



**Protest.** A protest is a written letter in which you explain why you believe you are not liable for a proposed assessment of taxes or why you believe you are entitled to a refund of previously paid taxes. A protest is filed after you have received a proposed assessment of taxes or after a claim for refund has been either partially or wholly denied at the initial refund claim stage.

